

**UNITED STATES DISTRICT COURT
MEMORANDUM**

Date: March 6, 2013
To: Counsel and Mr. Carroll
Re: Carroll v. Dolan, et al., 00-864 (E.D. Mo.)
From: Judge Kornmann

I have looked at the returns as to subpoenas which I ordered served. Only five of the nine individuals plaintiff sought to subpoena as witnesses have possibly been served with a subpoena. The clerk's office directed the subpoenas as to the named defendants to be served on Thomas D. Smith, an attorney in the Attorney General's office. This, of course, is improper procedure. You do not serve a witness by serving the attorney. That is not personal service. To make matters worse, the service was actually made on Stephanie Rawlins, a legal secretary whose employer is unnamed. My Order directed service on named individuals, not on someone else. My Order was obviously not followed. A deputy marshal should know how to serve a subpoena, regardless of what the clerk's office tells the marshal to do.

Do the defendants waive any defects as to the service of their subpoenas? If so, they should do so in writing and promptly. I assume their attorneys plan to have them at the trial, with or without a subpoena.

We have other problems with the subpoenas. Those who are "unserved" include Keith Kernebeck and James Mowry, the officers who allegedly transported plaintiff to Normandy Medical. The Marshals Service says they cannot find them. I do not know how much effort was put forth to find them. Cannot almost anyone be located via the internet these days?

As for James Hayden, the process server was told by the St. Louis Police Department that no one with that name ever worked for the department. Counsel for the defendants referenced the witness with the first name of James (Doc. 312) but, in another document (Doc. 313, page 4), called him Captain John Hayden. Which is it?

I would appreciate it if counsel for the defendants as officers of the court would assist with service of all these subpoenas. I imagine I could have my law clerk search and locate individuals but I want to avoid any such involvement in the process of getting this case finally ready for trial.

I believe the return of service as to Robert Fischer has not yet been filed. Has he been served or not? I believe he was an officer with the St. Louis County Police Department.

I do not want to again postpone this trial or get to St. Louis and find that we have problems that prevent the trial from being conducted.

Thank you for your attention to these matters. I look forward to hearing from counsel for the defendants.

CHARLES B. KORNMAN
UNITED STATES DISTRICT JUDGE
United States Courthouse
102 Fourth Avenue SE, Suite 408
Aberdeen, SD 57401
605-377-2600

Susan Margolies
Clerk's file